

**MAIL STOP APPEAL BRIEF- PATENTS**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In Re: Patent Application of John P. Blasko et al**

Conf. No.: 6850 : Group Art Unit: 3622  
Appln. No.: 09/742,527 : Examiner: RETTA, Yehdega  
Filing Date: 21 DECEMBER 2000 : Attorney Docket No.: T721-14  
Title: System and method for automatically managing avail inventory data and avail pricing

**APPELLANT'S REPLY BRIEF TO THE EXAMINER'S ANSWER**

In response to the Examiner's Answer dated March 13, 2008, and further to the Appeal Brief filed December 10, 2007, Applicants hereby submit a Reply Brief in accordance with 37 C.F.R. §41.41 for the above-referenced application.

A Request for Oral Hearing under 37 C.F.R. §41.47 is submitted herewith.

This Reply Brief is being filed in response to the Examiner's Answer, dated March 13, 2008 (Examiner's Answer). All of the arguments set forth in the Appellant's Appeal Brief, filed December 10, 2007 (Appeal Brief), are incorporated herein by reference.

## **RESPONSE TO EXAMINER'S ARGUMENTS**

### **Claim 1**

As an initial point, Applicants note that although the Examiner states that "Examiner does not interpret [an avail] to mean the advertisement itself," (Examiner's Answer, pg. 7) the Examiner nonetheless continues to equate an "avail" with an "advertisement spot" in Hendricks. In fact, the Examiner was unable to respond to the specific instances in which Applicants pointed out this incorrect interpretation in previous arguments, including the Examiner explicitly equating the "advertisement spots" in Hendricks with the "avails" in the current application. (See Appeal Brief pg. 11 – 13) However, it is abundantly clear **that in Hendricks an "advertisement spot" is an actual advertisement and not an avail.** As stated in Hendricks "A spot placement engine 307 decides which advertisement spots to place in open spots, or pods during each program." (Hendricks, column 29, lines 64 – 66) As such, in Hendricks, **advertisement spots are advertisements which are placed into open spots or pods.** As Applicants have explained time and time again, an avail refers "to the space during which advertisements are placed." The avails in Applicants' application are the equivalent of the "open spots or pods" from Hendricks. Therefore, each time the Examiner relies on Hendricks' use of "advertisement spots" as "proof" of Hendricks' treatment of avails, the Examiner is clearly and unequivocally mistaken.

In the Examiner's Final Office Action dated May 3, 2007, the Examiner argues that Fig. 4 of Hendricks teaches "correlating available addressable units of a communication network with avails." (Final Office Action, pg. 3) In response to Applicants' argument that Fig. 4 "seems entirely irrelevant to proving the specific teachings of Hendricks **as they relate to claim 1,**" (see Appeal Brief, pg. 11) the

Examiner simply states that Fig. 4 "is relevant to provide the specific teaching of Hendricks." (Examiner's Answer, pg. 7) Applicants did not, and still do not, dispute that Fig. 4 is relevant to Hendricks. However, the Examiner has failed to explain how Fig. 4 is relevant to claim 1. Alternatively, the Examiner argues that "whether it is directly or indirectly, there is a correlation (relationship) between the advertisement, program breaks and the addressable units." (Examiner's Answer, pg. 8) Applicants note that the term "correlation" is not synonymous with the term "relationship," and the term "correlating" can only be read as a process of causing the correlation to exist. As such, the mere fact that there is some "indirect" relationship between two items does not mean that those two items have been correlated. A close reading of the section of Hendricks relied upon for this rejection shows that the "indirect" relationship between "program breaks" and "set tops" in Hendricks is coincidental and exists only through a series of passive, indirect relationships. Specifically, the Examiner relies on column 4, line 54 – column 5, line 51:

The process of managing the program and the feeder channels begins with a number of configuration and set-up steps. First, individual television terminal address information is collected at an operations center, which may be a cable headend site or other central control station. This information is required to uniquely identify each television terminal and to associate with that identifier necessary information to aid in the targeting process. ...Next, television terminal groups are determined. This is needed if the management of information and targeting to individual television terminals is not practical initially, either due to non-availability of information to the appropriate level of detail, or technology to control and deliver messages and advertisements to an individual television terminal...For each target criteria, each television terminal is assigned to a group based on the information collected about the television terminal's environment. ... Since the available feeder channels may be shared across several program channels, their allocation must be managed and optimized. A break management engine determines how many feeder channels are available for each program break. Furthermore, each program break may contain one or more "pods" during which a "commercial spot" or targeted advertisement may be aired. ... the maximum number of spots available for a given program break will depend on the total number of feeder channels available and the alignment of program breaks across all program channels.

Thus, Hendricks describes storing set top-address information in a central location and grouping this information. The system then uses a break management engine to monitor the avails by ensuring that there are a correct number of feeder channels. The system then uses a spot placement engine to ensure that these avails fit into the programs at the addressable units. Finally, the spot placement engine places advertisements into avails. This is in stark contrast to the process in claim 1, which includes “correlating available addressable units of the communications network with an avail inventory.” At no point is there “correlating available addressable units of the communications network with an avail inventory.” Rather, there is only a passive, coincidental relationship based on the fact that advertisements are displayed on addressable units. Since advertisements are displayed on addressable units there will be some passive and indirect relationship between them, but this is far from the claimed element of “correlating available addressable units of the communications network with an avail inventory.” The Examiner admits as much when stating, “that in Hendricks the advertisements are displayed during ‘program breaks’ or ‘slots’ or ‘spaces for advertisements ... placed in programs that are transmitted to the set top (television terminals or addressable units). Whether it is directly or **indirectly**, there is a correlation (relationship) between the advertisement, program breaks and the addressable units.” (Examiner’s Answer, pg. 8) This can only be viewed as acquiescence of Applicants’ viewpoint that no correlation exists, but only a passive and coincidental relationship. If Examiner thought otherwise, the Examiner would have pointed this out rather than just suggest an “indirect” relationship between the two items.

#### Claim 10

The Examiner argues that, “Hendricks, same as Appellant’s method, selects avails by selecting a group with particular region or area.” (Examiner’s Answer, pg. 9) While the Examiner correctly points out that in one embodiment of the current application avails are selected based upon their particular geographical region or area, this is not, however, what is recited in claim 10, and, as such, is irrelevant. Claim 10 does not recite selecting avails, “by selecting a group with a particular region or area.” Rather, claim 10 recites selecting available addressable units “by the user and a subset of the available

avails are selected by the user.” This is completely supported by the specification in paragraph 54: “the user does not need to purchase all the identified available avails, but may have an option of selecting a subset of the identified available avails.” Hendricks does not teach this claimed element.

#### Claim 85

The Examiner argues that Hendricks teaches the “user select[ing] at least one avail for purchase” as recited in claim 85, because Hendricks teaches “the break management engine must also account for the number and type of available targeted advertisements for display and the variety of subscribers ... who will potentially view the program,” noting that the user supplies this information. (Examiner’s Answer, pg. 9) However, this portion of Hendricks does not teach a situation where the “user selects at least one avail for purchase.” As Applicants have explained, “Hendricks simply does not allow a user to make an affirmative selection of avails.” (Appeal Brief, pg. 15)

#### Claim 86

Respectfully, the Examiner’s response to Applicants’ arguments with respect to claim 86 shows a lack of understanding of the argument. Applicants argue that, “Hendricks only selects advertisements in an automated fashion to fill breaks based on a matching scheme,” while claim 86 recites allowing a user (or advertiser) to purchase at least one of the specific avails from claim 1. (Appeal Brief, pg. 16) In essence, claim 86 and Hendricks teach exactly opposite processes. Hendricks teaches a process where an advertisement is *automatically* assigned to an avail, whereas claim 86 recites a process where a *user* selects the specific avail.

#### Claim 88

The Examiner argues that since, “there is no step claimed that required user input after the market segment selection is received,” that, “Appellant’s argument is directed to a feature or step that is not claim.” (Examiner’s Answer, pg. 10) However, Applicants have not relied on user input after the market segment selection is received. Applicants

quite clearly stated that Hendricks does not teach “receiving a market selection from a user,” as recited in claim 88. The Examiner relies on Tables D, E and F to show “receiving a market selection from a user”. (Examiner’s Answer, pg. 11) However, as explained in Applicants’ Appeal Brief, in Hendricks, “the user is not allowed to enter a market segment.” (Appeal Brief, pg. 17) The Examiner is unable to show anywhere in Hendricks where the user enters a market segment because none exists.

#### Claim 95

The Examiner does not argue that Hendricks teaches the claimed element, but rather argues that in “neither the claim nor Appellant’s specification indicate that the avails are uniquely identified.” However, Applicants have neither claimed nor argued that avails are “uniquely identified.” Claim 95 recites that the “user selects at least one avail.” This is supported in the specification where it states “the user does not need to purchase all the identified available avails, but may have an option of **selecting** a subset of the **identified** available avails.” Applicants are thus unsure how the Examiner can assert that the avails are not identified and selected, when the specification speaks at length about “selecting” avails which have been “identified.”

Additionally, the Examiner argues that Hendricks’ teaching of using market segments is somehow the equivalent of a method where the “user selects at least one avail.” The Examiner, however, fails to show where Hendricks allows the user to select a market segment or allows the selection of an avail. The Examiner does not show this because Hendricks does not teach these features.

#### Claim 99

The Examiner argues that, “since Hendricks teaches user selecting market segment to air the advertisement, and is also charged for airing the advertisement, the charge is dependent on the market segment.” Claim 99 recites a price that, “is dependent on said market segment selection.” In no way does the fact that Hendricks’ charging for airing the *advertisement* suggest that the charge is dependent on the selected market segment. There is no relationship between the two concepts, and there is no teaching or

suggestion, as argued by the Examiner or elsewhere in Hendricks, that the pricing structure in Hendricks is somehow dependent on the market segment selection.

Claims 101-103

The Examiner argues at great length that Hendricks teaches, “receiving a programming selection from a user,” but is unable to show any place in Hendricks where this actually occurs. In fact, the Examiner argues against this notion that Hendricks teaches this by detailing how the system – not the user – makes the programming selections.

Claim 104

The Examiner concludes that, “thus, the avail (program breaks) of Hendricks are dependent to addressable units and are selected by the advertisers to correspond to a market segment.” (Examiner’s Answer, pg. 13) Although Applicants do not necessarily agree with the Examiner, this point was not at issue and is thus irrelevant. Applicants specifically argued that “Hendricks does not disclose the ‘price for said avails is dependent on whether the addressable unit corresponding to an avail is within said market segment.’” The Examiner has failed to show how pricing is related to the alleged structure in Hendricks. In actuality, nowhere does Hendricks teach the claimed element.

Claim 105, 107 - 112

The Examiner argues that “the claim does not recite user entering a correlation selection,” but instead recites “the method of receiving a correlation selection.” (Examiner’s Answer, pg. 13) Claim 105 actually recites, “receiving a correlation selection from a user.” The Examiner relies on Table H to show this element. However neither Table H, nor anywhere else in Hendricks teaches receiving this information from a user.

Claim 106

The Examiner argues that, “there is no mechanism provided” for purchasing an avail. Claim 106 recites, “wherein a user may actuate the purchase of at least one avail.” Applicants simply do not understand how the Examiner’s viewpoint can be that claim 106 does not provide a mechanism for purchasing an avail when the claim specifically recites this mechanism. The Examiner’s argument does not make it clear how the phrase “may actuate” somehow negates the rest of the claim. The phrase “may actuate” cannot be read any way other than giving the user an option to purchase the avail, and the Examiner has failed to suggest a different reading.

*Conclusion*

In all of the above situations, the Examiner has either failed to understand the claims and/or the prior art (i.e., Hendricks) and continuously fails to show how Hendricks discloses all of the features of the independent or dependent claims. For the above reasons set forth above, Applicants submit that the rejection of claims 1-21 and 85-113 is in error, and that the application, including claims 1-21 and 85-113 is in condition of allowance. Accordingly, Applicants respectfully request that the Board reverse the Examiner’s rejections of claims 1-21 and 85-113 and remand this application for issue.

Respectfully submitted,

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